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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

22 CR 392 (LAP)-2
Videoconference Plea

5 NIKHIL WAHI,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 12, 2022
12:27 p.m.

10 Before:

11 HON. LORETTA A. PRESKA,

12 District Judge

13
14 APPEARANCES VIA VIDEOCONFERENCE

15 DAMIAN WILLIAMS,

16 United States Attorney for the
Southern District of New York

17 BY: NOAH SOLOWIEJCZYK

18 Assistant United States Attorney

19 CHAUDHRY LAW PLLC

Attorneys for Defendant

20 BY: PRIYA CHAUDHRY

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1 (The Court and all parties appearing via
2 videoconference)

3 THE COURT: United States against Nikhil Wahi. Is the
4 government ready?

5 MR. SOLOWIEJCZYK: Yes, your Honor, good afternoon.
6 Noah Solowiejczyk on behalf of the government.

7 THE COURT: And is the defense ready?

8 MS. CHAUDHRY: Yes, your Honor. Priya Chaudhry, on
9 behalf of Mr. Nikhil Wahi, who is present and on the video
10 wearing a blue shirt and dark tie.

11 THE COURT: Yes, ma'am, good afternoon.

12 And, counsel, are we agreed that we are proceeding by
13 video pursuant to the CARES Act because of the Covid-19
14 pandemic?

15 MS. CHAUDHRY: Yes, your Honor. I have reviewed with
16 Mr. Wahi and executed the consent to proceed by remote video
17 proceedings. He understands that he has the right to have this
18 hearing conducted in person in the Southern District in your
19 courtroom and has elected to proceed via video instead.

20 THE COURT: Wonderful. I find that Mr. Wahi has
21 knowingly and voluntarily waived his right to be present in the
22 courtroom.

23 Ms. Chaudhry, am I correct that Mr. Wahi wishes to
24 change his plea?

25 MS. CHAUDHRY: Yes, your Honor. Pursuant to a plea

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1 agreement executed with the government, Mr. Wahhi would like to
2 withdraw his plea of not guilty as to Count One only, and
3 instead today enter a plea of guilty as to that count.

4 THE COURT: Yes, ma'am. Thank you.

5 Mr. Wahhi, would you unmute yourself and raise your
6 right hand.

7 (Defendant sworn)

8 Thank you. And, sir, do you understand that you're
9 now under oath, and if you answer my questions falsely, your
10 answers may later be used against you in a prosecution for
11 perjury or the making of a false statement?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: How old are you, sir?

14 THE DEFENDANT: I'm 27 years old, your Honor.

15 THE COURT: And where were you born?

16 THE DEFENDANT: In New Delhi, India.

17 THE COURT: And are you a citizen of the United
18 States?

19 THE DEFENDANT: I am not.

20 THE COURT: How far did you go in school, sir?

21 THE DEFENDANT: I completed an undergraduate degree in
22 computer science and economics.

23 THE COURT: And you read, write, speak and understand
24 English; is that correct?

25 THE DEFENDANT: Yes, I do, your Honor.

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1 THE COURT: Are you currently, or have you recently
2 been, under the care of a doctor or a psychiatrist?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Have you been hospitalized or treated
5 recently for alcoholism, narcotic addiction, or any other type
6 of drug abuse?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Have you ever been treated for any form of
9 mental illness?

10 THE DEFENDANT: I have not.

11 THE COURT: Are you currently under the influence of
12 any substance, such as alcohol, drugs, or any medication that
13 might affect your ability to understand what you're doing
14 today?

15 THE DEFENDANT: I am not.

16 THE COURT: And do you feel well enough to understand
17 what you're doing today?

18 THE DEFENDANT: I do. Yes, your Honor.

19 THE COURT: So, sir, have you received a copy of the
20 indictment against you, 22 CR 392?

21 THE DEFENDANT: I have. Yes, your Honor.

22 THE COURT: And have you gone over it with your
23 attorney?

24 THE DEFENDANT: I have, your Honor.

25 THE COURT: And has she explained to you the charges

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1 against you?

2 THE DEFENDANT: Yes, she has.

3 THE COURT: And have you told her everything you know
4 about the matters that are set out in the indictment?

5 THE DEFENDANT: I have, your Honor.

6 THE COURT: You haven't held anything back from her,
7 have you, sir?

8 THE DEFENDANT: I have not, no.

9 THE COURT: Thank you.

10 Counsel, do I correctly understand that there is an
11 agreement between the defendant and the government, which is
12 dated August 24, 2022, and which is signed by Ms. Chaudhry on
13 September 9 and by Mr. Wahi on August 26th; is that right?

14 MS. CHAUDHRY: That is right, your Honor.

15 THE COURT: May I ask the government to summarize,
16 please, the terms and conditions of the agreement?

17 MR. SOLOWIEJCZYK: Yes, your Honor. Under the
18 agreement, the defendant would be pleading guilty solely to
19 Count One of the indictment which charges conspiracy to commit
20 wire fraud, in violation of Title 18, United States Code,
21 Section 1349, which carries a maximum term of imprisonment of
22 20 years, a maximum term of supervised release of three years,
23 a maximum fine of the greatest of \$250,000, twice the gross
24 pecuniary gain derived from the offense and twice the gross
25 pecuniary loss to a person other than the defendant as a result

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1 of the offense --

2 THE COURT: Mr. Solowiejczyk, why don't we slow down a
3 little --

4 MR. SOLOWIEJCZYK: Sorry.

5 THE COURT: -- so that the court reporter's fingers
6 are not smoking.

7 MR. SOLOWIEJCZYK: You're very right, your Honor. My
8 apologies.

9 -- twice the gross pecuniary loss to a person other
10 than the defendant as a result of the offense, and a \$100
11 mandatory special assessment. The agreement contemplates a
12 forfeiture amount of \$54,100, and earlier today, your Honor, we
13 submitted a consent preliminary order of forfeiture for the
14 Court's consideration.

15 If your Honor would like, I'm happy to go into the
16 guidelines range and that sort of thing. I'm not sure how much
17 detail you'd like.

18 THE COURT: That's good enough.

19 Mr. Wahi, are those the terms and conditions of the
20 agreement as you understand them?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And, sir, do you understand that in this
23 agreement, you and the government have agreed to a stipulated
24 guidelines range of ten to 16 months' imprisonment?

25 THE DEFENDANT: Yes, I do, your Honor.

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1 THE COURT: And do you also recall, sir, that in this
2 agreement, you have agreed that you will not appeal or
3 otherwise litigate a sentence that is within or below that ten-
4 to 16-month range?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And, sir, do you also recall that in this
7 agreement you have acknowledged that if you are not a citizen,
8 as you've told me you are not, your plea here might result in
9 your removal or otherwise adverse immigration consequences?

10 THE DEFENDANT: I do understand, your Honor.

11 THE COURT: Very well. Now, Mr. Wahi, have you had
12 enough time to review the agreement, to go over it with
13 Ms. Chaudhry, and to have all of your questions answered?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And, sir, I'm holding up the original of
16 the agreement and turning to the last page. Is that your
17 signature there on the left-hand side, under the words "Agreed
18 and consented to"?

19 THE DEFENDANT: I can't see the signature.

20 THE COURT: I'm sorry. Let me try it again. Here we
21 go. How's that?

22 THE DEFENDANT: That's my signature, yes.

23 THE COURT: Is that you?

24 THE DEFENDANT: Yes.

25 THE COURT: Thank you.

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1 And, sir, am I correct that your willingness to offer
2 to plead guilty is, in part, a result of this agreement between
3 you and the government?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Counsel, are there any additional
6 agreements between the defendant and the government that are
7 not set forth in the written plea agreement?

8 MR. SOLOWIEJCZYK: No, your Honor.

9 MS. CHAUDHRY: No, your Honor.

10 THE COURT: Very well, then. The agreement is
11 acceptable to the Court.

12 Now, Mr. Wahi, have you been induced to offer to plead
13 guilty as a result of any fear, pressure, threat or force of
14 any kind?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Have you been induced to offer to plead
17 guilty as a result of any statements by anyone, other than in
18 your written plea agreement, to the effect that you would get
19 special treatment or special leniency, or some kind of special
20 consideration if you pleaded guilty rather than going to trial?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: And, sir, do you understand that you have
23 the right to continue in your plea of not guilty and to proceed
24 to trial?

25 THE DEFENDANT: I do understand that.

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1 THE COURT: And do you understand, sir, that if you do
2 not plead guilty, you have a right to a speedy and public trial
3 by a jury of 12 persons?

4 THE DEFENDANT: I understand, your Honor.

5 THE COURT: And, sir, do you understand that you have
6 the right to be represented by an attorney at trial and at
7 every stage of the proceedings, including an appeal, and if you
8 cannot afford an attorney, one will be appointed to represent
9 you free of charge?

10 THE DEFENDANT: I understand, your Honor.

11 THE COURT: And, sir, do you understand that if your
12 plea of guilty is accepted, you give up these rights with
13 respect to this charge against you?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Sir, do you understand that if your plea
16 of guilty is accepted, there will be no further trial of any
17 kind?

18 THE DEFENDANT: I understand, your Honor.

19 THE COURT: Do you understand that if you pleaded not
20 guilty and went to trial, that upon such a trial, you would be
21 presumed innocent unless and until the government proved your
22 guilt beyond a reasonable doubt to all 12 jurors?

23 THE DEFENDANT: I understand, your Honor.

24 THE COURT: Do you understand that at such a trial,
25 you would have the right to confront and cross-examine all of

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1 the witnesses called by the government against you?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: And do you understand that upon such a
4 trial, you could remain silent and no inference could be drawn
5 against you by reason of your silence, or if you wanted to, you
6 could take the stand and testify in your own defense?

7 THE DEFENDANT: Yes. I do, your Honor.

8 THE COURT: And, sir, do you understand that upon such
9 a trial, you would be able to subpoena witnesses and evidence
10 for your own defense?

11 THE DEFENDANT: Yes. I do, your Honor.

12 THE COURT: And, sir, do you understand that if your
13 offer to plead guilty is accepted, you give up these rights
14 with respect to this charge against you, and the Court may
15 impose sentence just as though a jury had brought in a verdict
16 of guilt against you?

17 THE DEFENDANT: Yes. I do, your Honor.

18 THE COURT: And, sir, do you understand that if you
19 wanted to, and if the government agreed, you could have a trial
20 before a judge without a jury; in which event, the burden of
21 proof would still be on the government, and you would still
22 have the same constitutional rights?

23 THE DEFENDANT: Yes. I do, your Honor.

24 THE COURT: And, sir, do you understand that upon your
25 plea of guilty to Count One, the Court has the power to impose

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1 upon you a maximum period of imprisonment of 20 years, a
2 maximum period of supervised release of three years, a maximum
3 fine of the greatest of \$250,000, twice the gross pecuniary
4 gain derived from the offense, or twice the gross pecuniary
5 loss resulting from the offense, together with a \$100 mandatory
6 special assessment?

7 THE DEFENDANT: Yes. I do, your Honor.

8 THE COURT: And do you also understand, sir, that upon
9 your plea of guilty to this charge, the Court has the power to
10 require you to make restitution?

11 THE DEFENDANT: Yes. I do, your Honor.

12 THE COURT: And am I correct, sir, that you have, in
13 fact, signed this consent preliminary order of forfeiture/money
14 judgment on September 12th; is that right, sir?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And is that your signature, sir?

17 THE DEFENDANT: That is my signature, your Honor.

18 THE COURT: Thank you. Do you also understand, sir,
19 that if the terms and conditions of supervised release are
20 violated, you may be required to serve an additional period of
21 imprisonment which is equal to the period of supervised
22 release, with no credit for time already spent on supervised
23 release?

24 THE DEFENDANT: Yes, your Honor. I understand.

25 THE COURT: Sir, have you discussed the sentencing

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1 guidelines with your attorney?

2 THE DEFENDANT: I have, your Honor.

3 THE COURT: And do you understand that the Court will
4 not be able to determine exactly what guideline applies to your
5 case until after a presentence report has been completed, and
6 you and your attorney and the government have a chance to
7 review it, and to challenge the facts that are presented there
8 by the probation officer?

9 THE DEFENDANT: Yes, your Honor. I understand.

10 THE COURT: And, sir, do you understand that in
11 determining a sentence, it's the Court's obligation to
12 calculate the applicable sentencing guidelines range, and then
13 to consider that range, possible departures from that range
14 under the guidelines, and other sentencing factors set out in
15 the statute, 18, United States Code, section 3553(a)?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And, sir, do you also understand that
18 under some circumstances, as set forth in your plea agreement,
19 either you or the government might have the right to appeal
20 whatever sentence is imposed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And, sir, do you understand that parole
23 has been abolished; so if you're sentenced to prison, you will
24 not be released on parole?

25 THE DEFENDANT: Yes, your Honor. I understand.

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1 THE COURT: And, sir, do you understand that the
2 offense to which you are pleading guilty is a felony?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you fully satisfied with the advice,
5 counsel and representation given to you by your attorney,
6 Ms. Chaudhry?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And am I correct that you are offering to
9 plead guilty because you are, in fact, guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Sir, if you wish to plead guilty, I'm
12 going to ask you to tell me what you did. As you can see, your
13 answers will be made where Ms. Chaudhry can hear you, and I
14 remind you that your answers are being recorded by the court
15 reporter. Do you understand, sir?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And do you still wish to plead guilty?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Tell me what you did, Mr. Wahi.

20 THE DEFENDANT: So from July 2021 until May 2022, in
21 the Southern District of New York and elsewhere, I knowingly
22 conspired and agreed with others to trade in cryptocurrency
23 based on Coinbase's confidential information about the future
24 listing of those cryptocurrency coins on the Coinbase platform.
25 Specifically, I learned about which new cryptocurrency

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1 coins would be listed --

2 THE COURT: I'm sorry, sir. Sir, may I ask you to go
3 a little more slowly, and would you start at "specifically"
4 again, please, sir?

5 THE DEFENDANT: Specifically, I learned about
6 information about which new cryptocurrency coins would be
7 listed on the Coinbase platform before Coinbase publicly
8 announced that information. Based on that information, which I
9 knew I was not entitled to know and before Coinbase's public
10 announcement of that information, I made trading decisions and
11 bought cryptocurrency coins.

12 I used the internet to make those trades, and I used
13 cryptocurrency wire transfers to buy and sell the
14 cryptocurrency coins.

15 While I did not believe that cryptocurrency was a
16 security, I relied on statements of Coinbase and others that
17 cryptocurrency is not a security, I knew that it was wrong to
18 receive Coinbase confidential information and make trading
19 decisions based on that confidential information.

20 I'm very sorry for what I did, and I deeply apologize
21 to the Court for my actions. I understand that this is a
22 mistake that's going to cost me in many ways. I'm going to be
23 deported from this country when all of this is over. I'm also
24 going to lose everything that I worked for over the last ten
25 years; so for my actions, I am really sorry.

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1 This is a heavy price to pay in addition to whatever
2 sentence you impose, your Honor.

3 THE COURT: Yes, sir. Thank you.

4 Mr. Solowiejczyk, is there anything further by way of
5 allocution?

6 MR. SOLOWIEJCZYK: No, your Honor. But I did just --
7 nothing in particular with respect to the allocution, which we
8 believe is sufficient. I did just want to very briefly note
9 for the record because the defendant noted his belief that the
10 crypto-assets were not securities.

11 I wanted to note that the question of whether these
12 crypto-assets were securities is not an issue before this
13 Court. It's not an element of the offense to which the
14 defendant is pleading guilty, and for that reason, the
15 government's decision to resolve this case with a wire fraud
16 plea should not be understood as an acceptance of the
17 defendant's claims regarding his understanding of the issue,
18 nor should it be understood as a statement about whether these
19 crypto-assets at issue were, in fact, securities, or that the
20 defendant needed to know that they were securities.

21 But the government merely wanted to note that for the
22 record in light of the defendant's statement, but otherwise, we
23 believe the allocution is more than legally sufficient.

24 Your Honor, I'll also view just very briefly make a
25 venue proffer, if your Honor will permit.

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1 THE COURT: Yes, sir.

2 MR. SOLOWIEJCZYK: With respect to venue, obviously,
3 the government would have to prove it by a preponderance of the
4 evidence, and the government would establish venue in the
5 Southern District of New York, among other means, because one
6 of the defendant's co-conspirators communicated with Coinbase
7 employees and engaged in acts of deception with respect to
8 Coinbase employees to obtain this confidential business
9 information and those employees were in Manhattan.

10 In addition, certain of the relevant actions taken by
11 this defendant through various electronic accounts, included
12 log-ins that occurred through Manhattan-based servers.

13 THE COURT: Yes, sir. And while we're discussing
14 elements, would you please recite the elements that the
15 government would have to plead if Mr. Wahi went to trial?

16 MR. SOLOWIEJCZYK: Yes, your Honor. So the defendant
17 is pleading guilty to Count One of the indictment, which
18 charges conspiracy to commit wire fraud, in violation of Title
19 18, United States Code, Section 1349.

20 To prove that offense, the government would have to
21 establish the following elements beyond a reasonable doubt:

22 First, the government must prove the existence of the
23 charged conspiracy; and second, the government must prove that
24 the defendant knowingly and willfully became a member of and
25 joined in the conspiracy.

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1 The object of the conspiracy charged in Count One is
2 wire fraud, in violation of Title 18, United States Code,
3 Section 1343. That offense has the following elements:

4 First, that there was a scheme or artifice to defraud
5 or to obtain money or property by materially false and
6 fraudulent pretenses, representations or promises. And, your
7 Honor, I would just note, with respect to the meaning of the
8 term "property" and its applicable to this case, it bears
9 noting that the Supreme Court stated in *United States United*
10 *States v. Carpenter*, 484 U.S. 19, that "confidential business
11 information has long been recognized as property."

12 The second element is that the defendant knowingly
13 participated in the scheme or artifice to defraud, with
14 knowledge of its fraudulent nature, and with specific intent to
15 defraud.

16 And third, and finally, that in execution of the
17 scheme or artifice, the defendant used or caused the use of
18 interstate or international wires.

19 Thank you, your Honor.

20 THE COURT: Yes, sir.

21 Mr. Wahi, do you understand that those are the
22 elements the government would have to prove if you went to
23 trial on Count One?

24 THE DEFENDANT: Yes. I do, your Honor.

25 THE COURT: Thank you.

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1 Ms. Chaudhry, do you know of any valid legal defense
2 that would prevail if Mr. Wahi went to trial?

3 MS. CHAUDHRY: I do not, your Honor.

4 THE COURT: And do you know of any reason why he
5 should not plead guilty?

6 MS. CHAUDHRY: I do not, your Honor.

7 THE COURT: Very well. Then, the plea is accepted.
8 It's the finding of the Court in the case of the *United States*
9 *against Nikhil Wahi*, that the defendant is fully competent and
10 capable of entering an informed plea; and that his plea of
11 guilty is knowing and voluntarily and is supported by an
12 independent basis in fact containing each and every essential
13 element of the offense.

14 My findings are based upon Mr. Wahi's allocution and,
15 in addition, on my observations of him by video today. The
16 plea of not guilty is withdrawn and the plea of guilty to Count
17 One is accepted and shall be entered. The defendant is now
18 adjudged to be guilty of the offense.

19 Now, Mr. Wahi, as you know, you'll be required to meet
20 with the probation officer and to give the officer certain
21 information to be included in the presentence report. Your
22 attorney may be present with you when you meet with the
23 probation officer, if you want, but certainly both you and she
24 and the government will have the opportunity to read the
25 presentence report prior to sentencing. Sentencing will be on?

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1 THE DEPUTY CLERK: December 13th at noon.

2 THE COURT: Is there anything further today, counsel?

3 MR. SOLOWIEJCZYK: Nothing further from the

4 government. Thank you, your Honor.

5 MS. CHAUDHRY: Nothing further from defense. Thank

6 you, your Honor.

7 THE COURT: Thank you, counsel.

8 Ms. Reporter, do you need anything from any of us?

9 THE REPORTER: No, your Honor. Thank you.

10 THE COURT: Thanks very much, Rose.

11 Thank you very much, ladies and gentlemen. Good

12 afternoon.

13 (Adjourned)

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